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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,271

06/24/2003

Pekka Pollari

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EXAMINER

JOSEPH, TONYA S

ART UNIT

PAPER NUMBER

3628

MAIL DATE

DELIVERY MODE

07/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/606,271	Applicant(s) POLLARI, PEKKA	
	Examiner Tonya Joseph	Art Unit 3628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06/26/2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Response to Arguments

1. Applicant's arguments with respect to claims 1-3, 5-8, 10-11 and 14-24 filed 06/26/2007 have been fully considered but they are not persuasive.
2. Applicant argues with respect to claim 15 that the claim is directed to statutory subject matter. The recitation of "a wireless terminal" in the preamble, the mere implication of employing a machine or article of manufacture to perform some or all of the recited steps, does not confer statutory subject matter to an otherwise abstract idea unless there is a positive recitation in the claim as a whole to breathe life and meaning into the preamble. There is no recitation of a wireless terminal in the body of the claim, as such, the claim is still not considered to be statutory and the rejection will be maintained.
3. Applicant argues with respect to claims 1 and 14-16 that the term registration is implicitly defined as a process in which an application identifier and an option for paying for use of the application are stored in one or more data stores of an operator network, along with a user identifier, however, Examiner notes, according to Applicant's claim, registration is defined as a process in which an application identifier and an option for paying for use of the application **are signaled to an operator network, along with a user identifier.** Applicant further argues with respect to claims 1 and 14-16, that there is no teaching by which the client can locate in the licensing medium license information for the application and for the user (i.e. for some user identifier), as required by claims 1 and 14-16. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

Art Unit: 3628

(i.e., how the client knows how to find all the applications for which the licensing medium stores licensing information) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner notes claims 1 and 14-16 do not require the specificities of how the information is indexed or how it is searched. The claims merely require the business relationship manager to determine if the application is registered. Edelman clearly performs the same task of determining if the application is registered in para. 60 and para. 62. Accordingly, the rejection will be maintained.

4. Applicant further asserts that the Office Action beginning at the end of line 6 of section/paragraph 7, suggests a teaching by Edelman that is not properly supported, (with respect to claims 1 and 18). Examiner notes, the Office Action clearly recites and provides disclosure regarding the claimed limitation.

5. Applicant asserts with respect to claims 1 and 14-16 that Kunii does not teach a business relationship manager receiving a request from an application to check if a user is registered to use the application. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a

Art Unit: 3628

reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

6. Applicant asserts with respect to claim 3, communication over the internet may be via http, and need not be via XML. Examiner notes, the signaling can be provided by hypertext transfer protocol and other signaling methods in the alternative as recited by the claim limitation.

7. Applicant asserts with respect to claim 6, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., checking the registration authority each time an attempt is made to access the protected software) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

8. Applicant asserts with respect to claim 8, that Edelman does not teach an identifier common to all copies. Examiner notes para. 82 lines 1-3 discloses a transmitted product number for the software. Examiner is interpreting a transmitted product number as identifier common to all copies.

Accordingly, the rejections of claims 1-3, 5-8, 10-11, 14-18 are maintained.

9. Applicant asserts with respect to claims 19 and 22, that the application is not hosted until the purchase is made. Examiner notes the order in which the option is

Art Unit: 3628

provided has not been claimed. Furthermore, whether or not the hosting occurs prior or subsequent to paying, the application is still being hosted, as required by the recited limitations of the claim. This rejection is maintained.

10. Applicant asserts with respect to 20-21 and 24, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonya Joseph whose telephone number is 571-270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3628

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tonya Joseph
Examiner
Art Unit 3628